

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)

1990 North California Blvd., Suite 940

Walnut Creek, CA 94596

Telephone: (925) 300-4455

Facsimile: (925) 407-2700

E-mail: ltfisher@bursor.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUSTIN SERNA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

1-800-GOT-JUNK? LLC,

Defendant.

Case No. 5:24-cv-47

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Justin Serna (“Plaintiff”) brings this action against Defendant 1-800-
2 GOT-JUNK? LLC (“Defendant” or “Got-Junk”), individually and on behalf of all
3 others similarly situated. Plaintiff makes the following allegations pursuant to the
4 investigation of his counsel and based upon information and belief, except as to
5 allegations specifically pertaining to himself and his counsel, which are based on
6 personal knowledge.

7 **NATURE OF THE ACTION**

8 1. This is a class action suit brought against Defendant Got-Junk for
9 surreptitiously monitoring and recording the telephonic communications between
10 consumers and its customer service representatives without first providing notice or
11 obtaining the customer’s consent.

12 2. Got-Junk is a waste management company that provides junk removal
13 services to residential customers. Since its inception in 1989, Got-Junk has become
14 one of the largest residential waste removal companies in California and throughout
15 the United States.

16 3. As a junk removal company, Defendant provides support to customers
17 over the phone and provides quotes and scheduling appointments for its junk
18 removal services. Defendant monitors and records these interactions. What
19 Defendant fails to do, however, is disclose this fact to customers who receive calls
20 initiated by Defendant.

21 4. Because Defendant fails to disclose to consumers that it is recording
22 telephonic communications at the outset of the call, Defendant violated and
23 continues to violate the California Invasion of Privacy Act (“CIPA”), Cal. Penal
24 Code §§ 632 and 632.7.

25 5. Both Penal Code §§ 632 and 632.7 play important roles in protecting
26 the privacy of California residents. Secret monitoring and recording denies the
27 customer an important aspect of privacy of communication – the right to control the
28 nature and extent of the information they disclose.

1 6. Plaintiff brings this action on behalf of himself and a class of all persons
2 whose telephonic communications were surreptitiously recorded by Defendant.

3 **PARTIES**

4 7. Plaintiff Justin Serna is a California citizen and resident, residing in
5 Fontana, California. Mr. Serna is a domiciliary of California.

6 8. Defendant -800-GOT-JUNK? LLC (“Got Junk”) is a Delaware limited
7 liability corporation headquartered in Vancouver, Canada. Defendant’s sole member
8 is RBDS Rubbish Boys Disposal Service Inc., a Canadian corporation headquartered
9 in Vancouver, Canada. Defendant Got Junk is a prominent junk removal company.

10 **JURISDICTION AND VENUE**

11 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
12 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
13 members of the proposed class are in excess of \$5,000,000.00, exclusive of interest
14 and costs, and at least one member of the proposed class is citizen of state different
15 from Defendant.

16 10. This Court has personal jurisdiction over Defendant because Defendant
17 has purposefully availed itself of the laws and benefits of doing business in this
18 State, and Plaintiff’s claims arise out of each of the Defendant’s forum-related
19 activities. Furthermore, a substantial portion of the events giving rise to Plaintiff’s
20 claims occurred in this District.

21 11. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this
22 action because a substantial part of the events, omissions, and acts giving rise to the
23 claims herein occurred in this District.

24 **FACTUAL ALLEGATIONS**

25 12. Got-Junk is a privately owned junk removal franchise that operates in
26 the United States, Canada, and Australia. Got-Junk was founded in 1989 by Brian
27 Scudamore: a high school drop-out student who saw an opportunity to pay for his
28 college tuition by removing junk with a beatdown pickup truck which he initially

1 called “The Rubbish Boys.”¹ Today, Got-Junk is one of the leading junk removal
2 companies in the United States with a yearly revenue of over \$400 million.²

3 13. As with any moving company, Defendant must field customer inquiries
4 and provide support for any issues that may arise in connection to its services. To
5 that end, Defendant supplies a catchy and easy-to-remember customer service
6 number for consumers to call: 1-800-GOT-JUNK (*i.e.*, 1-800-468-5865). Defendant
7 also utilizes other customer service numbers in subsequent calls with its customers
8 depending on a customer’s location.

9 14. When Defendant calls customers using any of these numbers, the
10 customer service agent does not disclose that the call is being recorded. As such,
11 customers have a reasonable expectation of privacy regarding any information that
12 they divulge on the call, including personally identifying information, including their
13 name and telephone number, as well as the identity of the objects they seek to
14 dispose, and the address where those items are located (all of which is highly
15 sensitive in nature). Customers maintain this expectation of privacy because
16 Defendant does not disclose that the call is being recorded and Defendant never
17 obtains customer consent to do so.

18 15. Contrary to Plaintiff and class members’ belief, however, the
19 conversations between customers and Defendant’s agents are being surreptitiously
20 recorded, including through the use of software provided by Invoca, Inc (“Invoca”).

21 16. Defendant records and monitors customer calls through a software
22 platform developed by Invoca, and potentially other platforms as well.

23 ¹ CNBC, *Founder of 1-800-GOT-JUNK? dropped out of college to haul junk — now,*
24 *he’s eyeing a billion-dollar business* (Jan. 12, 2021),
25 <https://www.cnbc.com/2020/08/01/how-the-1-800-got-junk-founder-became-a-multimillionaire.html>

26 ² Franchise Chatter, *FDD Talk: 1-800-Got-Junk? Franchise Costs, Fees, Average*
27 *Revenues and/or Profits (2022 Review)* (Nov, 27, 2022),
28 <https://www.franchisechatter.com/2022/11/27/fdd-talk-1-800-got-junk-franchise-costs-fees-average-revenues-and-or-profits-2022-review/>

1 17. Invoca’s software comprises a suite of tools which are focused on
2 optimizing marketing campaigns and audience management by allowing companies
3 to monitor and analyze customer-agent phone interactions. Invoca’s software uses
4 artificial intelligence technology to record and transcribe customers’ phone calls,
5 which it then analyzes to gain insight about the customer’s purchasing journey. For
6 example, Invoca enables companies to identify whether customer calls are being
7 placed from numbers on their webpages or marketing campaigns. Invoca also
8 provide analytics about these phone calls, including general issues derived from
9 ubiquitous key words that it scans from call transcriptions. Invoca records the
10 contents of these calls as they occur in real time.³

11 18. Defendant deliberately implemented the call recording and monitoring
12 features of Invoca’s software in an effort to improve its marketing campaigns.

13 19. In an advertising brochure about Got-Junk’s incorporation of the Invoca
14 software into its customer service protocol, Invoca writes:

15 “When a potential customer uses one of the call center numbers on the
16 1-800-GOT-JUNK? website, an agent responds and manually records
17 the call outcome in the company’s customer relationship management
18 (CRM) platform. And, before Invoca, that’s where the information
19 would have stayed. However, by using Google Click ID, Invoca was
20 able to automatically stream that information, including specific details
about the call outcome, back to Google Ads.”⁴

21 20. Defendant deliberately monitors and records customer phone calls and
22 shares them with third parties for marketing purposes, yet Defendant fails to provide
23

24 ³ “Unlike other systems that only begin recording once the agent answers, Invoca
25 begins recording as soon as the call connects — and stays on the call no matter
26 where it’s transferred to — enabling you to capture the complete caller experience,
every time.” <https://www.invoca.com/product/call-recordings-and-transcriptions>

27 ⁴ [https://assets-global.website-](https://assets-global.website-files.com/5dfbb65fcb94d5455876bad9/5f470ec01a4808358ec39317_Invoca-Case_Study-1-800-GOT-JUNK.pdf)
28 [files.com/5dfbb65fcb94d5455876bad9/5f470ec01a4808358ec39317_Invoca-](https://assets-global.website-files.com/5dfbb65fcb94d5455876bad9/5f470ec01a4808358ec39317_Invoca-Case_Study-1-800-GOT-JUNK.pdf)
Case_Study-1-800-GOT-JUNK.pdf

1 notice to customers that this is occurring, nor does Defendant obtain customer
2 consent to be recorded.

3 21. In early 2021, Mr. Serna contacted Defendant's customer service
4 number with the intention of aiding an elderly neighbor in the removal of cardboard
5 and metal debris from her property. Following an internal transfer and subsequent
6 disconnection, Mr. Serna left a voicemail. Within one hour, he received a call from
7 one of Defendant's customer service numbers. Although Mr. Serna did not hire
8 Defendant for junk removal services, he continued to receive subsequent follow-up
9 calls from Defendant's customer service numbers, in approximately May 2021 and
10 November 2021. In or about June of 2022, Mr. Serna received a call from one of
11 Defendant's customer service numbers pertaining to a request Mr. Serna submitted a
12 few days prior. During the call, Mr. Serna discussed personal and confidential
13 matters with one of Defendant's agents.

14 22. The phone calls took place while Mr. Serna was physically present in
15 California. During the calls Defendant placed to him, Mr. Serna was never told that
16 the calls were being recorded, and he never consented to those recordings.

17 23. Because Defendant did not disclose that its calls to Mr. Serna were
18 being recorded, Mr. Serna reasonably expected that his communications with
19 Defendant and its agents during the calls were not being recorded, and were
20 therefore "confidential" as defined by California Penal Code § 632(c).

21 24. On information and belief, Defendant was, in fact, recording Mr.
22 Serna's calls and captured the contents of his communications with the live agents
23 using Invoca's software.

24 25. Any applicable statute(s) of limitations has been tolled by the "delayed
25 discovery" rule. Plaintiff did not know that any of his calls were recorded until he
26 conferred with and retained counsel on November 7, 2023. Prior to this date,
27 Plaintiff had no way of knowing that his calls were recorded because Defendant does
28 not disclose its practice of recording its outbound calls.

26. Defendant's policy of monitoring and recording calls without informing customers is a uniform practice and occurs anytime a customer has a phone call with Defendant.

CLASS ALLEGATIONS

27. ***Class Definitions.*** Plaintiff brings this action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure on behalf of a class of similarly situated individuals, defined as follows (the "Section 632 Class"):

All individuals who, while physically present in California, participated in an inbound telephone call with Got-Junk or one of its agents.

28. Plaintiff also seeks to represent a class, defined as follows (the "Section 632.7 Class"):

All individuals who, while physically present in California and using a cellular telephone, participated in an inbound telephone call with Got-Junk or one of its agents.

29. Specifically excluded from the Classes are Defendant, Defendant's officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities controlled by the Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with the Defendant and/or Defendant's officers and/or directors, the judge assigned to this action, and any member of the judge's immediate family.

30. ***Numerosity.*** Members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Classes number in the thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail

1 and/or publication through the distribution records of Defendant.

2 31. **Commonality.** Common questions of law and fact exist as to all
3 Class members and predominate over questions affecting only individual Class
4 members. Common legal and factual questions include, but are not limited to:

5 (a) Whether Defendant has a policy and practice of recording and/or
6 monitoring telephone conversations with customers;

7 (b) Whether Defendant notifies customers that it is recording them;

8 (c) Whether Defendant obtains a customer's consent to be recorded
9 at the outset of the telephone call;

10 (d) Whether Defendant instructed its agents to record and monitor
11 calls without disclosing to customers that they were doing so;

12 (e) Whether Defendant has violated the California Invasion of
13 Privacy Act ("CIPA"), Cal. Penal Code § 632 and invaded Plaintiff and the Class's
14 privacy rights in violation of the California Constitution;

15 (f) Whether Defendant has violated the California Invasion of
16 Privacy Act ("CIPA"), Cal. Penal Code § 632.7;

17 (g) Whether Plaintiff and the Classes are entitled to injunctive relief
18 under Cal. Penal Code § 637.2(b) to enjoin or restrain Got-Junk from committing
19 further violations of Cal. Penal Code §§ 632 and 632.7.

20 (h) Whether class members are entitled to actual and/or statutory
21 damages for the aforementioned violations.

22 32. **Typicality.** The claims of the named Plaintiff are typical of the claims
23 of the Class because the named Plaintiff, like all other class members, called Got-
24 Junk's customer service line using his cell phone and had his communications
25 recorded without his consent.

26 33. **Adequacy.** Plaintiff is an adequate representative of the Class because
27 his interests do not conflict with the interests of the Class members he seeks to
28 represent, he has retained competent counsel experienced in prosecuting class

1 actions, and he intends to prosecute this action vigorously. The interests of Class
2 members will be fairly and adequately protected by Plaintiff and his counsel.

3 34. ***Superiority.*** The class mechanism is superior to other available means
4 for the fair and efficient adjudication of the claims of Class members. Each
5 individual Class member may lack the resources to undergo the burden and expense
6 of individual prosecution of the complex and extensive litigation necessary to
7 establish Defendant's liability. Individualized litigation increases the delay and
8 expense to all parties and multiplies the burden on the judicial system presented by
9 the complex legal and factual issues of this case. Individualized litigation also
10 presents the potential for inconsistent or contradictory judgments. In contrast, the
11 class action device presents far fewer management difficulties and provides the
12 benefits of single adjudication, economy of scale, and comprehensive supervision by
13 a single court on the issue of Defendant's liability. Class treatment of the liability
14 issues will ensure that all claims and claimants are before this Court for consistent
15 adjudication of the liability issues.

16 35. Plaintiff brings all claims in this action individually and on behalf of
17 members of the Classes against Defendant.

18 **COUNT I**
Violation of Cal. Penal Code § 632

19 36. Plaintiff repeats the allegations contained in the paragraphs above as if
20 fully set forth herein.

21 37. Plaintiff brings this Count individually and on behalf of the members of
22 the putative Section 632 Class.

23 38. California Penal code § 632(a) provides, in pertinent part:

24 A person who, intentionally and without the consent of all
25 parties to a confidential communication, uses [a] ... recording
26 device to ... record the confidential communication, whether
27 the communication is carried on among the parties in the
28 presence of one another or by means of a telegraph, telephone,
or other device, except a radio, shall be punished by a fine not
exceeding two thousand five hundred dollars (\$2,500) per

1 violation.

2 39. A defendant violates Section 632 unless it can show it had the consent
3 of all parties to a communication prior to the moment the recording was made.

4 40. Defendant, using computer software, intentionally monitored and
5 recorded the telephonic communications between itself and its agents on the one
6 hand and Plaintiff and other members of the Classes on the other.

7 41. At no time did Defendant or any of its agents inform Plaintiff or the
8 members of the Classes that the recording of their telephonic communications was
9 taking place and at no time did Plaintiff or the members of the Classes consent to this
10 activity.

11 42. These communications were “confidential communications,” as that
12 term is used in Section 632, because Plaintiff and class members had objectively
13 reasonable expectations of privacy with respect to any personal or financial
14 information they disclosed during the course of those communications.

15 43. Defendant has therefore violated Cal. Penal Code § 632(a) by
16 intentionally recording Plaintiff and the members of the Classes’ telephonic
17 communications without first notifying them or obtaining their consent.

18 44. Accordingly, Plaintiff and the members of the Classes have been injured
19 by Defendant’s conduct and, pursuant to Cal. Penal Code § 632, each seek damages
20 of \$5,000 per violation.

21 **COUNT II**
Violation of Cal. Penal Code § 632.7

22 45. Plaintiff repeats the allegations contained in the paragraphs above as if
23 fully set forth herein.

24 46. Plaintiff brings this Count individually and on behalf of the members of
25 the putative Section 632.7 Class.

26 47. California Penal Code § 632.7(a) prohibits the same conduct as
27 described in Section 632, but extends this prohibition to communications involving a
28

1 cellular telephone.

2 48. Though similar, Cal. Penal Code § 632 and § 632.7 are not duplicative
3 and protect separate rights.

4 49. Cal. Penal Code § 632.7 grants a wider range of protection to
5 conversations where one participant uses a cellular phone or cordless phone because
6 it does not have the “confidential communication” requirement of Cal. Penal Code §
7 632.

8 50. A defendant violates Section 632.7(a) unless it can show it had the
9 consent of all parties to a communication prior to the moment the recording was
10 made.

11 51. Defendant, using computer software, intentionally monitored and
12 recorded the telephonic communications between Plaintiff, and the members of the
13 Section 632.7 Class, and its agents.

14 52. At no time did Defendant or any of its agents inform Plaintiff or the
15 members of the Section 632.7 Class that the recording of their telephonic
16 communications was taking place and at no time did Plaintiff or the members of the
17 Section 632.7 Class consent to this activity.

18 53. Defendant has therefore violated Cal. Penal Code § 632.7(a) by
19 intentionally recording Plaintiff or the members of the Section 632.7 Class’s
20 telephonic communications without first notifying them or obtaining their consent.

21 54. Accordingly, Plaintiff and the members of the Section 632.7 Class have
22 been injured by Defendant’s conduct and, pursuant to Cal. Penal Code § 637.2, each
23 seek damages of \$5,000 per violation.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
26 situated, seeks judgment against Got-Junk, as follows:

- 27 a. For an order certifying the putative Classes and naming Plaintiff as the
28 representative of the classes, and Plaintiff’s attorneys as Class Counsel

- 1 to represent the putative Classes;
- 2 b. For an order declaring that the Defendant's conduct violates the statutes
- 3 referenced herein;
- 4 c. For an order finding in favor of Plaintiff and the putative Classes on all
- 5 counts asserted herein;
- 6 d. For statutory damages in amounts to be determined by the Court and/or
- 7 jury;
- 8 e. For prejudgment interest on all amounts awarded;
- 9 f. For injunctive relief as pleaded or as the Court may deem proper; and
- 10 g. For an order awarding Plaintiff and the putative Classes their reasonable
- 11 attorneys' fees and expenses and costs of suit.

12 **JURY TRIAL DEMANDED**

13 Plaintiff demands a trial by jury on all claims so triable.

14

15 Dated: January 9, 2024

BURSOR & FISHER, P.A.

16 By: /s/ L. Timothy Fisher

17 L. Timothy Fisher

18 L. Timothy Fisher (State Bar No. 191626)

19 1990 North California Blvd., Suite 940

20 Walnut Creek, CA 94596

21 Telephone: (925) 300-4455

22 Facsimile: (925) 407-2700

23 E-mail: ltfisher@bursor.com

24 *Attorneys for Plaintiff*

25

26

27

28